SUPREME JUDICIAL COURT
Sitting as the Law Court

State of Maine	}	
	}	
v.	}	Law Court Docket Number
	}	Kno-18-138
Randall Junior Weddle	}	

On Appeal of Criminal Conviction
from the Knox County Unified Criminal Docket
Docket No.: CR-16-474

Brief for Appellee
State of Maine

JONATHAN LIBERMAN
District Attorney
Prosecutorial District VI
Bar # 4716

JEFFREY BARODY
Deputy District Attorney
Prosecutorial District VI
Bar # 4678

Attorneys for Appellee

62 Union Street
Rockland, Maine 04841
(207) 594-0424

Table of Contents

Table of Authorities

Constitution

Cases

Statutes

Rules of Court

Other Sources

Procedural History

After a motor vehicle crash that occurred on March 18, 2016, Randall Junior Weddle, the appellant, was charged by criminal complaint on April 29, 2016, with two counts of Manslaughter in violation of 17-A M.R.S. §203(1)(A) and two counts of Aggravated Operating Under the Influence in violation of 29-A M.R.S. §2411(1-A)(D)(1). Mr. Weddle initially appeared in the Knox County Unified Criminal Docket on May 16, 2016 and was indicted on June 10, 2016. The indictment included the four charges in the complaint, as well as the following additional charges: Aggravated Operating Under the Influence, in violation of 29-A M.R.S. §2411(1-A)(D)(1); Driving to Endanger, in violation of 29-A M.R.S. §2413(1-A); Driving to Endanger in violation of 29-A M.R.S. §2413(1); and eight counts of Commercial Motor Vehicle Rule Violations, in violation of 29-A M.R.S. §558-A(1)(A). Mr. Weddle was arraigned and pled not guilty on June 22, 2016.

Mr. Weddle filed motions to suppress on September 29, 2016 and May 24, 2017, and motions in limine dated May 24, 2017 and December 27, 2017. On February 7, 2017 Mr. Weddle's initial court-appointed attorney withdrew and subsequent court-appointed attorneys were appointed.

A hearing on Mr. Weddle's motions to suppress was held on July 24 and July 25, 2017. The trial court denied Mr. Weddle's motions in a written order

dated September 11, 2017, holding that 29-A M.R.S. §2522 was constitutional despite the U.S. Supreme Court's decisions in Missouri v. McNeely and Birchfield v. North Dakota because seizure of blood pursuant to that statute in this case was reasonable, that the special needs exception applied based on Mr. Weddle's operation of a commercial motor vehicle, and that the exigent circumstances exception applied because the compelling circumstances of the crash scene. App. at 62, 63-64. Mr. Weddle's motions in limine were denied after hearing by the trial court on January 22, 2018.

Jury selection began on January 3, 2018, resumed on January 19, 2018 and completed on January 22, 2018. A jury trial was held from January 23, 2018 to January 29, 2018. During the trial, the trial court overruled Mr. Weddle's objection to the admission of supporting documents pertaining to Mr. Weddle's operating of the tractor trailer truck, ruling that the documents were statements of a party opponent admissible pursuant to M.R. Evid. 801(d)(2). App. at 67, Tr. T. Jan 25, 2018 at 150-152. At the close of the State's case, the trial court denied Mr. Weddle's motion for judgment of acquittal on count 13, ruling that there was sufficient evidence from which the jury could find that Mr. Weddle's duty status was false. Tr. T. Jan 29, 2018 at 13.

The jury returned guilty verdicts on all counts on January 30, 2018. On March 23, 2018 Mr. Weddle was sentenced as follows:

Counts 1 & 2 (each): 30 years confinement to the Department of Corrections, with all but 25 years suspended and four years of probation.

Count 3: $2100 fine, 10 year suspension of Mr. Weddle's right to operate a motor vehicle, and 10 years confinement.

Count 4: $2100 fine, 10 year suspension of Mr. Weddle's right to operate a motor vehicle, and 10 years confinement.

Count 5: $2100 fine, six year suspension of Mr. Weddle's right to operate a motor vehicle, and 10 years confinement.

Count 6: $575 fine, 180 day suspension of Mr. Weddle's right to operate a motor vehicle, and 5 years confinement.

Count 7: $575 fine, 30 day suspension of Mr. Weddle's right to operate a motor vehicle, and six months confinement.

Counts 8 - 15 (each): six months confinement.

The court ordered that Mr. Weddle's confinement be concurrent between all counts and imposed statutory surcharges and victim's compensation fund fees.

Mr. Weddle filed a notice of appeal on April 11, 2018.

Statement of Facts

On March 18, 2016 at a little after 2:00 p.m. Randall Weddle arrived at the Robbins Lumber Mill to load his flatbed tractor trailer truck with approximately 50,000 pounds of lumber products. (T. Tr. Jan. 23, 2018 at 268-269, T. Tr. Jan. 26, 2018 at 90.) Mr. Weddle briefly stepped out of the cab for a short conversation with a mill employee but otherwise stayed in the cab during the loading of the trailer. (T. Tr. Jan. 23, 2018 at 272.) Mr. Weddle's passenger "strapped down," or secured, the load of lumber products to the trailer. (Id. at 274.) While he was in the cab, Mr. Weddle had a drink of Crown Royal. (T. Tr. Jan. 24, 2018 at 24, T. Tr. Jan 25, 2018 at 136, State's Ex. 9.) Mr. Weddle also consumed his prescribed medication Lortab (hydrocodone), an opioid pain relieving medication. (Id.)

Mr. Weddle's tractor trailer was first noticed by other drivers on the road when it pulled out in front of a line of vehicles at the intersection of Routes 131 and 17 in Union, requiring the first driver in the line of cars, to "come on the brakes." (T. Tr. Jan 23, 2018 at 74-75, 105.) As this driver maintained about 55 miles per hour in a 55 miles per hour speed zone, the tractor trailer truck pulled away from him. (Id. at 106-17, T. Tr. Jan 26, 2018 at 108.) Mr. Weddle was driving his tractor trailer unit westbound on Route 17, heading toward Augusta. (T. Tr. Jan. 26, 2018 at 74, 100, 102.) A motorist travelling in the other

direction noticed that her car jiggled as the tractor trailer truck passed her and she looked in her rearview mirror to see the truck over the centerline. (T. Tr. Jan. 23, 2018 at 131.)

Tracy Morgan finished her workday at a credit union and headed home from Augusta in her KIA sport utility vehicle (SUV), to her daycare to pay for the week and see her children. (Id. at 47.) About a mile away from her destination, she saw Mr. Weddle's truck come around a corner and then saw wood flying off the back of the truck, then the end of the truck in her lane. (Id. at 48-49.) Tracy Cook, who was on his way home from Bath Iron Works with Chinese takeout for dinner, saw the tractor trailer cab in the correct lane but the trailer on Mr. Cook's of the road with the load shifting and canvas flapping. (Id. at 64-67.) The next thing he remembered was a woman telling him not to move and EMS providers using the Jaws of Life to get him out of his SUV. (Id.)

What Ms. Morgan and Mr. Cook saw was Mr. Weddle's truck as it came around a curve in the road and lost control, with the trailer sliding out into the oncoming lane, flexing, then tipping on its side and sliding down the oncoming lane, pushing the cab down the road. (T. Tr. Jan. 23, 2018 at 67, Jan. 26, 2018 at 95-96.) At the moment the trailer rolled over, it was speeding at 69.4 miles per hour in a 55 miles per hour speed zone. (T. Tr. Jan. 26, 2018 at 108.) Mr. Weddle's truck contained an engine control module that recorded data about

the vehicle's operation, including its speed. (T. Tr. Jan. 25, 2018 at 179.) 24 seconds prior to the crash, the 80,000 pound unit was speeding down the road at 79 miles per hour. (Id. at 197, T. Tr. Jan. 26, 2018 at 121.) Mr. Weddle reported no mechanical deficiencies with the tractor trailer unit and after conducting a vehicle autopsy Motor Carrier Inspector Daniel Russell determined that the tractor trailer combination was not a contributing factor in the collision. (T. Tr. Jan. 26, 2018 at 59-60, 65, State's Ex. 28.)

When the trailer swung out into the oncoming lane it collided with a line of oncoming vehicles composed of Dwight Fowles' Chevy pickup truck, Tracy Cook's Nissan SUV, Tracy Morgan's KIA SUV, and Christina Torres-York's Chrysler minivan. (T. Tr. at Jan. 23, 2018 at 54, 68, T. Tr. Jan. 26, 2018 at 91, State's Ex. 4, 5.) The load of lumber came off the trailer and left a large debris field within the quarter mile long crash scene. (T. Tr. Jan. 23, 2018 at 48-49, 227, T. Tr. Jan. 26, 2018 at 75.) Ms. Torres-York's Chrysler, covered in a pile of wood from the trailer, caught fire and burned. (T. Tr. Jan. 23, 2018 at 51, 108-110, Jan. 28, 2018 at 75.) Mr. Fowles and Ms. Torres-York were killed as a result of the collision. (T. Tr. Jan. 23, 2018 at 108-110, 230, T. Tr. Jan 25, 2018 at 243-244.) Mr. Cook had to be extricated from his vehicle and suffered injuries including fractured ribs, a fractured wrist, a popped clavicle, a concussion, cuts,

and bruising. (T. Tr. Jan 23, 2018 at 67, 69.) Ms. Morgan only suffered from minor physical injuries. (Id. at 54.)

Mr. Weddle was trapped in his upside-down truck cab and had to be extricated by firefighters. (Id. at 166-167, 193-194.) Documents were scattered all over the truck, and there was no order to the cab after it had overturned. (T. Tr. Jan. 25, 2018 at 225.) Kevin Curry, a fulltime firefighter paramedic, interacted with Mr. Weddle while he was trapped in the cab and noticed the odor of alcoholic beverage.[1] (T. Tr. Jan. 23, 2018 at 196.) Nicholas Ciasullo, another firefighter who spent time with Mr. Weddle in and out of the cab, noticed the smell of alcohol as he addressed Mr. Weddle from six inches away after he had been extricated. (Id. at 166-167, 172.) While Mr. Weddle was in SueAnne Shiffer's ambulance, she noticed the odor of intoxicating beverage.[2] (Id. at 254.) At the request of law enforcement, Advanced EMT Brian Wright drew blood from Mr. Weddle at the scene while Mr. Weddle was in the ambulance being prepared for flight by an air ambulance crew.[3] (Id. at

[1] Mr. Curry testified only at the jury trial and not at the motion to suppress hearing because the State was not aware of his presence at the scene until shortly before trial.
[2] Ms. Shiffer also testified only at the jury trial and not at the motion to suppress hearing because the State was not aware of her presence at the scene until shortly before trial.
[3] Separate evidence relating to the motion to suppress the blood draw was introduced at a hearing on July 24-25, 2017. Firefighter Nicholas Ciasullo interacted with Mr. Weddle in the overturned cab and, once extricated, introduced himself to Mr. Weddle. (M. Sup. T. vol. I at 174-175.) During this later interaction Mr. Ciasullo noticed the smell of alcohol coming from Mr. Weddle's facial area. (Id. at 178.) The first law enforcement officer on scene, Dep. Paul Spear of the Knox County Sheriff's Office, learned of at least one fatality not long after

226, 233-236.) Later, blood taken from Mr. Weddle for medical treatment was seized pursuant to a search warrant from the Lewiston hospital where Mr. Weddle was transported. (T. Tr. Jan. 24, 2018 at 54.)

Mr. Weddle was interviewed at the Lewiston hospital the night of the crash and later by police officers when he was arrested in Virginia. (T. Tr. Jan. 24, 2018 at 21-22, 83, 108, State's Ex. 9, 11, 13.) In these interviews Mr. Weddle admitted driving the tractor trailer truck, consuming alcoholic beverages, prescription medication, and feeling ill. (Id.)

Both blood samples were analyzed for alcohol content by the Maine Health and Environmental Testing Laboratory: the quantity of alcohol in the blood seized on scene was 0.09 grams per 100 milliliters of blood and the quantity of alcohol in the blood seized from the hospital was 0.07 grams per 100 milliliters of blood. (T. Tr. Jan. 25, 2018 at 33-34, 40-42.) Both blood samples were analyzed for 12 categories of drugs of abuse at NMS Labs: there was 24 ±4 nanograms per milliliters of Hydrocodone in the blood seized on

---

arriving on scene. (M. Sup. T. vol. II at 12.) Sgt. Matthew Elwell, also of the Knox County Sheriff's Office, responded to the crash and confirmed there were two fatalities at the crash. (M. Sup. T. vol. I at 192.) Law enforcement tasks at the scene were significant and included coordinating specialist investigators, finding involved people, identifying and interviewing potential witnesses, coordinating death notifications, setting up detours and controlling traffic. (Id. at 193-194). Based on the fatalities, that Mr. Weddle was going to be immediately Lifeflighted to a hospital not within his direct control, and out of concern that future medical treatment may alter the test result, Sgt. Elwell chose to have Mr. Weddle's blood drawn at the scene. (Id. at 196, 199-200.)

scene, and there was 23 ±4 nanograms per milliliter of Hydrocodone in the blood seized from the hospital. (Id. at 75, 77, 82-83.) Karen Simone, a pharmacologist, opined that alcohol consumed at the levels found in Mr. Weddle was generally unsafe for driving, and adding drugs that cause drowsiness to alcohol enhanced the dangerous impairment effect in terms of operating heavy machinery. (Id. at 144-145.)

Issues Presented for Review

I. Whether the suppression court erred in denying Mr. Weddle's motion to suppress evidence obtained through a warrantless blood test.

A. Whether 29-A M.R.S. § 2522 is constitutional since the U.S. Supreme Court decided Missouri v. McNeely and Birchfield v. North Dakota.

B. Whether the "exigent circumstances" exception to the warrant requirement validates Mr. Weddle's blood test.

C. Whether the "special needs" exception to the warrant requirement validates Mr. Weddle's blood test.

D. Whether the "good faith" exception to the warrant requirement validates Mr. Weddle's blood test.

II. Whether the trial court abused its discretion in admitting exhibits and testimony about receipts found in Mr. Weddle's tractor trailer.

III. Whether the trial court erred in denying Mr. Weddle's motion for a judgment of acquittal on count 13.

Summary of the Argument

The suppression court correctly denied Mr. Weddle's motion to suppress when it found that the warrantless seizure of Mr. Weddle's blood at the crash scene was justified based upon statutory authority, 29-A M.R.S. § 2522, and the special needs and exigent circumstances exceptions to the warrant requirement. Section 2522 requires operators of motor vehicles to submit to a chemical test if there is probable cause to believe a death has occurred and the results are only admissible if the State can prove that probable cause exists to believe that the operator was impaired at the time of the crash.

Missouri v. McNeely and Birchfield v. North Dakota do not mandate a different result in this case. McNeely merely eliminated the exigent circumstances exception as a *per se* exception in routine impaired driving cases, and specifically held that the exigent circumstances justification was still available on a case by case basis as determined by the totality of the circumstances. Birchfield, which eliminated the search-incident-to-arrest doctrine as a justification for warrantless blood draws in impaired driving cases, is not relevant to this case: Mr. Weddle was not under arrest and Birchfield contemplated routine cases: there were no fatalities or exigencies present there.

The exigent circumstances exception justifies the blood draw in Mr. Weddle's case. The crash scene caused by Mr. Weddle involved a tractor trailer truck, five cars, two fatalities, two serious injuries and a fire, all throughout a quarter mile long crash scene. The defendant was extricated from the upside down cab of his truck and as soon as practicable flown by air ambulance to a faraway hospital. The special needs exception also justifies the scene blood draw. Mr. Weddle was impaired by alcohol and drugs while driving a heavily regulated commercial motor vehicle. The State has a paramount interest in the safety of motorists on the roads, and this interest includes making the roads safer from impaired drivers and trying to contain the danger posed by large and heavy commercial motor vehicles on the road. As this court held in State v. Cormier, such governmental interest trumps the invasiveness of a blood test. Nothing has changed since Cormier was decided that mandates a different result here.

Next, the trial court properly admitted exhibits and testimony about documents located in Mr. Weddle's cab. These log book entries, fuel and toll receipts and truck maintenance receipts were required by federal regulations to be kept by Mr. Weddle in order to prove the hours he logged as a commercial motor vehicle driver. The court properly ruled these were statements of a party opponent, *see* ME. R. Evid. 801(d)(2), based on the reasons why Mr. Weddle

possessed these documents. That Mr. Weddle was not able to physically hand the documents over to the police officers is insignificant based on the totality of the facts – Mr. Weddle was rushed away for medical treatment and the documents had been strewn throughout the cab by the force of the crash.

Finally, the trial court properly denied Mr. Weddle's motion for judgment of acquittal as to count 13, which alleged a duty of status (logbook) violation based on Mr. Weddle fueling his truck when he noted he was off duty. Viewing the evidence in the light most favorable to the State, and drawing all reasonable inferences from the evidence, the fact finder could have found based on testimony of a commercial motor vehicle trooper that it was improper for Mr. Weddle to fuel his truck and claim he was off duty in his logbook.

The suppression and trial courts ruled properly and those decisions should not be overturned. This court should affirm Mr. Weddle's convictions.

Argument

I. The suppression court did not err in denying Mr. Weddle's motion to suppress a warrantless blood test.

In reviewing the suppression court's denial of Mr. Weddle's motion to suppress, this court is presented with a mixed question of fact and law, where findings of fact are overturned only when clearly erroneous and legal conclusions are reviewed de novo. State v. Sylvain, 2003 ME 5, ¶ 10, 814 A.2d 984, 986-7 (Me. 2003). This court "will uphold the court's denial of a motion to suppress if any reasonable view of the evidence supports the trial court's decision." State v. Lovett, 2015 ME 7, ¶ 6, 109 A.3d 1135 (Me. 2015).

The suppression court held that the warrantless blood draw conducted by law enforcement officers was justified under 29-A M.R.S. § 2522, the "special needs" exception and exigent circumstances, and consequently declined to consider the "good-faith" exception to the warrant requirement. (App. at 65.) This court should affirm the suppression court's ruling.

A. Title 29-A M.R.S. § 2522 remains constitutional since the U.S. Supreme Court decided Missouri v. McNeely and Birchfield v. North Dakota.

The United States Supreme Court's rulings in McNeely and Birchfield do not upset this court's prior decisions and do not require this court to find 29-A M.R.S. § 2522 unconstitutional.

Section 2522 requires law enforcement officers to test the blood of all drivers for intoxicants if there is probable cause to believe that a death has occurred or may occur.[4] On at least three previous occasions this Court has reviewed and upheld the constitutionality of section 2522 and its predecessor statute. *See* State v. Cormier, 2007 ME 112, ¶ 2, 928 A.2d 753, 755; State v. Roche, 681 A.2d 472, 474-75 (Me. 1996); State v. Benito, 600 A.2d 1094, 1096 (Me. 1991). The U.S. Supreme Court's decisions in Missouri v. McNeely and Birchfield v. North Dakota do not compel a different result now. *See* Missouri

[4] Title 29-A M.R.S. §2522 reads, in pertinent part:

§2522. Accidents

1. Mandatory submission to test. If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a chemical test, as defined in section 2401, subsection 3, to determine an alcohol level or the presence of a drug or drug metabolite in the same manner as for OUI.

. . .

3. Admissibility of test results. The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

v. McNeely, 569 U.S. 141 (2013); Birchfield v. North Dakota, __ U.S. __, 136 S.Ct. 2160 (2016).

In Cormier, this Court undertook a comprehensive review of section 2522's constitutionality and analyzed several exceptions to the warrant requirement that justified the warrantless seizure of blood from a driver at a fatal or potentially fatal accident scene. Cormier, 2007 ME 112, ¶ 13. Although the statue did not "fall neatly" into either the inevitable discovery or exigent circumstances exceptions, the obvious exigencies that exist at the site of a fatal collision combined with the legislative protections requiring the State to demonstrate that "but for the exigencies at the scene, probable cause for the test would have been discovered," rendered a test conducted pursuant to section 2522 reasonable and therefore permissible under the Fourth Amendment. Id. ¶ 18, 20, 26-27. Further, this Court held that the special needs exception to the warrant requirement also justified the constitutionality of section 2522, noting that the State's "interest in gathering information to assist in addressing the problem of intoxicated driving outweighs the privacy interest of drivers in the content of their blood." Id. ¶ 36.

In McNeely, where police drew the blood of the driver without a warrant in a routine impaired driving situation, the Supreme Court merely held that the dissipation of alcohol in a person's bloodstream does not present a *per se*

exigency that justified an exception to the warrant requirement, and that exigency must be determined "case by case based on the totality of the circumstances." McNeely, 569 U.S. 141, 144-45 (2013). Concurring, Justice Kennedy explained that while each case being "determined by its own circumstances" was correct as a general proposition, states can "give important, practical instruction to arresting officers, instruction that in any number of instances would allow a warrantless blood test in order to preserve the critical evidence." Id. at 166.

Contrary to McNeely, where the impaired driving incident was a routine case involving a stop for erratic operation, section 2522 contemplates a serious accident scene where a fatality has occurred or is likely to occur. Id. at 145. Further, in McNeely, although the court prohibited the government from categorically applying the exigent circumstances warrant exception to routine impaired driving cases, it did not eliminate the exception. Instead, the McNeely court "[did] not doubt that some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test." Id. at 153. Therefore, the exigent circumstances justification that this Court described in Cormier is still available and has not been foreclosed by the McNeely decision. The unique facts of this case justify the application of the

exigent circumstances exception, which remains alive and viable after McNeely. McNeely does not require this court to declare section 2522 unconstitutional.

In Birchfield, the Supreme Court addressed the search-incident-to-arrest doctrine and its applicability to blood tests following routine impaired driving arrests. The Court determined that a warrantless blood test may not be administered as a search incident to lawful arrest. Birchfield, 136 S.Ct. at 2174, 2185 (2016).

Mr. Weddle's case is distinguishable from Birchfield for three reasons. First, in each of the cases considered in Birchfield, the suspect had been arrested prior to the blood test. The government in those cases argued that justify the blood test was reasonable pursuant to the search-incident-to-arrest doctrine. Here, Mr. Weddle was not arrested until several weeks after the crash and was not under arrest at the time of the blood test. Therefore, the blood draw could not have been seized incident to lawful arrest and the search-incident-to-arrest doctrine is not relevant. Second, there were no exigencies presented in the facts of the Birchfield cases. The three different incidents examined in Birchfield were all routine impaired driving cases; none contemplated anything remotely close to the chaotic emergency scene faced by officers in Mr. Weddle's case. Finally, while Birchfield reaffirmed the invasive nature of a blood test, its doing so was in no way groundbreaking – the

Birchfield court merely cited past decisions in addressing the invasive nature of a blood test. The Birchfield decision is not relevant in this case and has no bearing on the constitutionality of section 2522.

Mr. Weddle incorrectly calls on this Court to follow an example set by a Kansas court in striking down an implied consent statute. *See* State v. Declerck, 317 P.3d 794 (Kan. Ct. App. 2014). This case is distinguishable from Declerck, where the Kansas law at issue directed a law enforcement officer to request a person to submit to a test if the person was operating a vehicle, the vehicle was involved in an accident resulting in serious injury or death, and the operator could be cited for any traffic offense. The statute specified that the "traffic offense violation shall constitute probable cause" for the test. Id. at 801, K.S.A. 2011 Supp. 8-1001(b)(2). There was no nexus in the Kansas statute between the test and probable cause to believe the operator was impaired by intoxicants. Maine's section 2522(3), however, requires the State to prove that probable cause existed to believe the operator was under the influence of intoxicants at the time of the accident.

Contrary to Mr. Weddle's argument, section 2522 does not subject all motorists to admissible blood tests without requiring any probable cause to suspect that a motorist may be impaired by intoxicants. First, section 2522 only applies to major accidents where a fatality has occurred or is likely to occur.

29-A M.R.S. § 2522(1). Second, section 2522(3) requires that, in order to admit the test at trial, the court must be satisfied that probable cause exists to believe that the operator was impaired at the time of the accident. 29-A M.R.S. § 2522(3). Therefore, the Legislature built into section 2522 a safeguard that protects motorists from having blood test results used against them in a later criminal proceeding if the State cannot demonstrate that there was probable cause to believe that the motorist was impaired.

Courts have upheld statutes that require the State to meet a burden to show the driver was impaired. A Maryland court upheld Md. Trans. Code Ann. § 16-205.1(c), a statute that required blood testing of persons involved in a motor vehicle accident that resulted in death or life threatening injury when the police had reasonable grounds to connect the crash to impaired driving.[5] Contemplating Justice Kennedy's dissent in McNeely and applying the Marks rule governing the interpretation of plurality opinions, the Maryland court held that TR § 16-205.1(c) was just the kind of rule that governments can establish

[5] TR § 16-205.1(c)(1) reads:

> "If a person is involved in a motor vehicle accident that results in the death of, or a life threatening injury to, another person and the person is detained by a police officer who has reasonable grounds to believe that the person has been driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, or in violation of § 16-813 of this title, the person shall be required to submit, as directed by the officer, to a test . . ."

to help law enforcement "identify a category of cases in which it is particularly reasonable to dispense with the warrant requirement."[6] Colbert v. State, 229 Md. App. 79, 84, 143 A.3d 173, 177 (2016).

McNeely and Birchfield do not require this court to declare section 2522 to be unconstitutional. McNeely specifically held that exigent circumstances remains a valid warrant exception, and Birchfield considered a warrant exception not relevant in this case. Section 2522 remains constitutional.

B. The "exigent circumstances" exception to the warrant requirement validates Mr. Weddle's blood test.

The Fourth Amendment, in relevant part, provides that "the right of the people to be secure in their persons, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend IV. Law enforcement officers usually must obtain a warrant before taking a sample of a suspect's blood. Schmerber v. California, 384 U.S. 757, 770 (1966). The warrant requirement is subject to exceptions

[6] *See* Colbert v. State, 229 Md. App. 79, 84, 143 A.3d 173, 176 (2016), quoting Marks v. United States, 430 U.S. 188, 193, 97 S. Ct. 990 (1977) ("When a fragmented Court decides a case and no single rational explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'")

and the exigent circumstances exception applies when probable cause to search exists and "when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the *Fourth Amendment*." McNeely, 569 U.S. 141, 148-149 (quotation marks omitted). While exigencies vary, "in some circumstances law enforcement officers may conduct a search without a warrant to prevent the imminent destruction of evidence" and courts use a totality of the circumstances review to determine whether or not the questioned warrantless seizure was justified. Id. at 149. "The exigent circumstances justification for warrantless searches applies when there is a compelling need to conduct a search and insufficient time in which to secure a warrant." State v. Rabon, 2007 ME 113, ¶ 14, 930 A.2d 268.

Contrary to McNeely, where the court eliminated the application of the exigent circumstances exception as a categorical rule, there is little doubt that the scene faced by officers in Mr. Weddle's case was unique, extreme, and diametrically opposed to the scenes faced by the officers in the McNeely case. The exigencies in this case went far beyond simply the dissipation of alcohol in Mr. Weddle's bloodstream – here officers were dealing with a geographically large crash scene, two fatalities, multiple involved cars, multiple witnesses, injured survivors being removed from the scene in the most expeditious

manners possible, and the concern that future medical treatment may alter Mr. Weddle's test result.

This court has previously upheld the exigent circumstances justification for a warrantless blood draw in a routine impairment case where a police officer obtained a blood sample from an impaired driver after the driver made unsuccessful attempts to provide a breath sample for a malfunctioning Intoxilyzer test. State v. Arndt, 2016 ME 31, ¶ 3, 133 A.3d 587. Because of the delay of one and one half hours, this court determined that the officer's concern for loss of evidence due to the metabolizing of alcohol in the driver's system was reasonable. Id. ¶ 11.

Two years after Birchfield was decided, this court again upheld the exigent circumstances justification for the taking of blood from a driver in an impaired driving case when the driver created undue delays during the traffic stop and Intoxilyzer process. State v. Martin, 2018 ME 144, __ A.3d __. The officer's actions were reasonable and it was the driver's "inability or unwillingness to take a proper breath test and his earlier interruptions . . . that created the exigent circumstances." Id. ¶ 14.

This court has recently taken the opportunity to comment favorably on the availability of the exigent circumstances warrant exception relating to changes in a test result based on medical treatment. State v. LeMeunier-

Fitzgerald, 2018 ME 85, ¶15 n.6 188 A.3d 183. In that case, the driver consumed a bottle of pills following her initial interaction with a police officer and was then taken to the hospital for medical treatment, where the officer obtained a blood sample without a warrant. Id. ¶ 3-4. This court indicated that the exigent circumstances justification, had it been argued, "may have arisen" due to the lack of availability of a breath testing instrument, her consumption of pills, and the "potential dissipation of the evidence through treatment at the hospital." Id. ¶ 15 n.6.

As summarized by the suppression court in this case:

> The police were responding to and investigating a double fatal accident involving 5 vehicles which closed Route 17 to any further traffic. The scene was chaotic in the extreme. The Defendant was trapped inside the upside-down cab of his tractor truck and was extricated after more than an hour of work by first responders. He was immediately placed on a back-board and brought by ambulance to a waiting helicopter. During all of this time – from approximately 4:45pm to 6:00pm or later – the police were confronted with overwhelming responsibilities.

App. at 63. Given the exigencies in Mr. Weddle's case – the chaos of the crash scene, his injuries, the delay in extracting him from his tractor trailer cab, and his impending flight to hospital for medical treatment – based on totality of the circumstances, the seizure of blood from his body was justified and objectively reasonable.

C. The "special needs" exception to the warrant requirement validates Mr. Weddle's blood test.

The special needs exception to the warrant requirement also justified the blood test taken at the scene in Mr. Weddle's case, and therefore the search of Mr. Weddle in the form of a blood test was reasonable.

To analyze the special needs exception, this Court "balance[s] the privacy interest of the individual against the government interests at stake to assess the practicality of the warrant and probable cause requirements." Cormier, 2007 ME 112, ¶ 29. This Court has acknowledged that "when faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Supreme Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." Lemeunier-Fitzgerald, 2018 ME 85, ¶ 12, 188 A. 3d 183.

As was the case in 2007 when this court decided Cormier, the need to address the problem of intoxicated driving in Maine remains paramount. Just as in 2007, the National Highway Transportation Safety Administration continues to emphasize the lack of available alcohol content data for operators involved in fatal crashes. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., NAT'L CTR. FOR

STATISTICS & ANALYSIS, TRAFFIC SAFETY FACTS: STATE ALCOHOL-IMPAIRED-DRIVING ESTIMATES, 2 (2018). Although Maine's rate of fatal accidents where the driver's alcohol content was above .08 has decreased slightly since 2007, it remains at 33%: one third of all fatal accidents in Maine involve a driver whose blood alcohol content is above .08.[7] Id. at 13.

In Cormier, this Court cited multiple Maine statutes designed to combat intoxicated driving in order to illustrate the attempts the Legislature had taken to address this pervasive problem. *See* Cormier, 2007 ME 112, ¶ 30, 928 A.2d 753, 29-A M.R.S. § 2411(1-A)(A)(1), 29-A M.R.S. § 2411(1-A)(A)(2), 29-A M.R.S. § 2521(5), 29-A M.R.S. § 2411(5)(F). All of these statutes remain in effect. Additionally, the Legislature continues to combat impaired driving and has taken steps since Cormier was decided to reinforce the importance of sober driving: 29-A M.R.S. §2411 was amended in 2014 to increase the mandatory minimum license suspension from 90 days to 150 days and to allow for a prior felony conviction occurring at any time, no matter how old, to enhance any future impaired driving charge to a felony. *See* 29-A M.R.S. § 2411(5)(A)(2), 29-

[7] In 2007, Maine's percentage of fatalities where the driver's alcohol content was above .08 was 36%. Based on 2016 data, nationwide 19% of fatal accidents involved drivers who were alcohol-impaired. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., NAT'L CTR. FOR STATISTICS & ANALYSIS, TRAFFIC SAFETY FACTS: STATE ALCOHOL-IMPAIRED-DRIVING ESTIMATES, 1 (2018).

A M.R.S. § 2411(1-A)(D)(2); 2013 Me. ALS 604, 2014 Me. Laws 604, 2013 Me. HP 1237.

While there is no doubt that a blood test involves a very invasive search, nothing has changed since Cormier was decided regarding the State's very important interest in protecting the safety of its citizens using its roadways. The Legislature continues to strengthen laws intended to combat impaired driving. In Cormier, this court concluded that:

> [T]he State's interest in gathering information to assist in addressing the problem of intoxicated driving outweighs the privacy interest of drivers in the content of their blood. The State's special needs, separate from the general purpose of law enforcement, justify an exception to the warrant requirement in these circumstances.

Cormier, 2007 ME at ¶ 36. Cormier remains good law. Nothing has changed since 2007 with regard to either the prevalence of alcohol-involved fatal accidents or the precedent relating to the special needs exception.

In this case Mr. Weddle was operating a fully loaded tractor trailer truck – a commercial motor vehicle. Commercial motor vehicles are very heavily regulated by both federal and state governments due to the inherent danger of these heavily loaded and large vehicles. Through 29-A M.R.S §555, the Legislature has authorized the Bureau of the State Police to adopt specific parts of 49 Code of Federal Regulations that regulate commercial motor vehicles, and

29-A M.R.S. §558-A criminalizes some violations of those regulations. Importantly, the Legislature has adopted Part 40 (procedures for transportation workplace drug and alcohol testing programs) and Part 392 (driving of commercial motor vehicles, which includes prohibitions on the use and even possession of alcohol in a commercial motor vehicle). *See* 49 CFR §40, §392.5. The government's interest in the safety of motorists as well as the danger of commercial motor vehicles is clearly indicated by the Legislature's providing for the adoption of these parts and criminalizing the violation of these parts.

In Skinner v. Railway Labor Executives' Ass'n, 480 U.S. 602, 109 S.Ct. 1402 (1989) the Supreme Court addressed Federal Railroad Administration regulations that required certain employees to be tested for the presence of drugs or alcohol following certain major train accidents. Id. The Court held that these searches were reasonable under the Fourth Amendment in part because testing posed only a limited threat to the employees' justifiable privacy expectation, concluding that "the expectations of privacy of covered employees are diminished by reason of their participation in an industry that is regulated pervasively to ensure safety." Id. at 627.

In State v. Roche, the defendant was a professional truck driver operating a logging truck when he cause a fatal crash. 681 A.2d 472, 473 (Me. 1996). As

a result of a mandatory blood alcohol test administered pursuant to section 2522's predecessor statue, 29 M.R.S. § 1312(11)(D), the defendant was charged with manslaughter and OUI. Id. at 472. Examining the defendant's posture in light of Skinner, this Court determined that the "legislature did not intend to treat an operator involved in a vehicle fatality in the same manner as an operator involved in a routine OUI stop" and that state highways are "highly regulated." Id. at 9, 10.

In this case Mr. Weddle was impaired by alcohol and drugs and was driving a commercial motor vehicle on a public way. The State maintains a significant interest in combating the danger posed by impaired drivers, especially in situations involving fatal crashes. Mr. Weddle was subject to extensive regulations promulgated by the Federal Motor Carrier Safety Administration regarding the use and even presence of alcohol and drugs in his vehicle and was subject to random inspection while operating on public ways. Based on Mr. Weddle's status as an impaired driver and a commercial motor vehicle driver, he had only a diminished expectation of privacy when his blood was drawn at the scene of the crash. The trial court correctly determined that the special needs exception applies in this case.

D. The "good faith" exception to the warrant requirement validates Mr. Weddle's blood test.

At the time of the crash and scene blood draw of Mr. Weddle, law enforcement officers were acting in good-faith reliance on 29-A M.R.S. § 2522, a statute which was lawfully in effect at that time and remains in effect to this day. Although the suppression court, relying on other grounds, failed to reach this argument, the good faith doctrine further defends the admissibility of the blood test result in Mr. Weddle's case.

Police are charged to enforce laws until and unless they are declared unconstitutional. Michigan v. DeFillippo, 443 U.S. 31, 38, 99 S.Ct. 2627 (1979). The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality – with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Id. "Exclusion [of evidence] is not a personal constitutional right nor is it designed to redress the injury occasioned by an unconstitutional search . . . The rule's sole purpose, as we have repeatedly held, is to deter future Forth Amendment violations." Davis v. United States, 564 U.S. 229, 236, 131 S.Ct. 2419, 2426 (2011). In "27 years of practice under Leon's good-faith exception, [the Supreme Court] has never applied the exclusionary

rule to suppress evidence obtained as a result of nonculpable, innocent police conduct. Id. at 240.

In Davis, police officers stopped a motor vehicle and arrested the driver and passenger. Id. at 235. During the search of the passenger compartment police found a handgun and as a result the passenger was charged with possession of a firearm by a felon. Id. The actions of the officers would have been permissible by many courts at the time, but while the Davis appeal was pending the Supreme Court decided Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L. Ed. 2d 485 (2009), in which it adopted a new rule which would have invalidated the search conducted by the officers in Davis. Id. at 233, 235-36. The Davis court declined to impose the exclusionary rule, finding that it does not apply when the police conduct a search in objectively reasonable reliance on binding appellate precedent. Id. at 250.

As in Davis, here officers relied on valid law when they seized Mr. Weddle's blood at the scene. 29-A M.R.S. §2522 was in full force and effect on March 18, 2016 and remains in effect. Birchfield, to the extent it is relevant, was not decided until June 23, 2016. Birchfield, 136 S.Ct. at 2160. The officers were objectively reasonable in their reliance on section 2522 and excluding evidence in this case would have no deterrent value because there was no misconduct to deter.

II. The trial court did not abuse its discretion when it admitted exhibits and testimony about receipts found in Mr. Weddle's tractor trailer.

At trial the court admitted as a statement by a party-opponent documentary exhibits pertaining to the operation and condition of Mr. Weddle's tractor trailer unit.[8] These exhibits consisted of a truck repair document, fuel receipts, a toll receipt, and a bill of lading and were all related to the operation of the truck as Mr. Weddle drove it north into Maine. (T. Tr. Jan. 25, 2018 at 150-151.)

This Court "review[s] the admission or refusal to admit evidence for an inappropriate exercise of discretion." State v. Cornhuskers Motor Lines, Inc., 2004 ME 101, ¶10, 854 A.2d 189. A statement can include nonverbal conduct if the person intended it to be an assertion. M.R. Evid. 801(a). A statement is not hearsay if it is offered against an opposing party and

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

[8] The evidence included State's exhibits 22, 24, 26, 26-A, 27, and 29.

(C) Was made by a person whom the party authorized to make a statement on the subject, but was not made to the principal or employer;

(D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed, but was not made to the principal or employer; …

M.R. Evid. 801(d)(2). Drivers must retain their record of duty status (logbooks) and supporting documents. 49 C.F.R. §395.8 (2016).

In State v. Cornhuskers Motor Lines Inc., this Court upheld the admission of a commercial truck driver's logbook and toll and fuel receipts as admissions by a party-opponent when the truck driver handed a State Police motor carrier inspector these documents in response to the inspector's request. Cornhuskers, 2004 ME 101, ¶2. This court held that because the driver was acting within the scope of his employment in "handing over" the documents as part of a task the driver was required to perform pursuant to the Federal Motor Carrier Safety Administration's (FMCSA) Regulations, the documents qualified as admissions by a party-opponent. Id. ¶ 12.

This case is analogous to Cornhuskers because Mr. Weddle was operating a commercial motor vehicle in the scope of his employment as a commercial motor vehicle driver. Similar to the Cornhuskers driver, Mr. Weddle was

required to maintain a logbook and supporting documents, investigators were professionally involved with Mr. Weddle and his truck by virtue of the crash, and therefore when investigators found the documents in his truck cab it was analogous to the Cornhuskers driver handing the documents over to the investigator.

It is of no consequence that the investigators here found the documents in the overturned cab rather than accepted them directly from Mr. Weddle. Based on the severity of the crash, the State Police commercial motor vehicle unit had been called to the scene and was investigating the case. Collecting log books and supporting documents is a basic part of any commercial vehicle stop, even a benign traffic stop to inspect records. Given the circumstances of Mr. Weddle's crash, it is clear police would request Mr. Weddle hand them such documents had he been able to do so. Here it was impossible for Mr. Weddle to have handed investigators his documents because he was incapacitated by his injuries and had been removed by air ambulance from the scene.

The analysis for whether or not the documents are nonverbal conduct amounting to a statement focuses on whether or not the person intended the nonverbal conduct to be an assertion. Mr. Weddle's possession of the documents in his commercial motor vehicle while he was on duty and operating it proves he intended the documents to be an assertion. Mr. Weddle was

required to retain, and did retain, these documents to compliance with his obligations under FMCSA regulations (*see* 49 C.F.R. §395.8). Whether Mr. Weddle personally handed over the documents to investigators or whether the documents were found in the cab during the investigation is irrelevant – what is important is that Mr. Weddle was required by federal regulations to possess the documents and he did possess them in his cab at the time of the crash. The documents were in Mr. Weddle's commercial vehicle while he was operating it for commercial purposes and were discovered by a commercial motor vehicle investigator shortly after the vehicle crashed. It stands to reason that if this had been a traditional traffic stop and police had had the opportunity to ask Mr. Weddle for his documents they would have, but here police couldn't do that due to the circumstances of the crash.

The documents were a statement because Mr. Weddle's possession of the documents in the circumstances in which he possessed them amounted to nonverbal conduct of Mr. Weddle intended to be an assertion. The trial court did not abuse its discretion when it admitted the documents into evidence.

III. The trial court properly denied Mr. Weddle's motion for a judgment of acquittal on Count 13.

This Court reviews a trial court's denial of a motion for a judgment of acquittal "by viewing the evidence in the light most favorable to the State to determine whether a jury could rationally have found each element of the crime proven beyond a reasonable doubt." State v. Adams, 2015 ME 30, ¶19, 113 A.3d 588. This is the "same standard as a challenge to the sufficiency of the evidence." State v. Lowden, 2014 ME 29, ¶13, 87 A.3d 694. This court further recognizes that "the fact-finder is permitted to draw all reasonable inferences from the evidence" and that "a criminal conviction may be based solely upon circumstantial evidence so long as the proffered evidence supports a finding that each element of the crime at issue is proved beyond a reasonable doubt." State v. Medeiros, 2010 ME 47, ¶ 16-17, 997 A.2d 95. Further, the "jury is permitted to draw all reasonable inferences from the evidence and is free to selectively accept or reject testimony presented based on the credibility of the witness or the internal cogency of the content." State v. Perkins, 2014 ME 159, ¶ 13, 107 A.3d 636 (quotation marks omitted).

Count 13 of the indictment charged Mr. Weddle with a rule violation for false report in connection with a duty status regarding an entry dated March

16, 2016. (App. at 81.) Mr. Weddle indicated in his logbook entry that covered the dates March 15 and March 16 that he was off duty. (T. Tr. Jan. 25, 2018 at 214-215, State's Ex. No. 23.) State's Exhibit 24 was a fuel receipt dated March 15, 2016 at 1754 hours. Trooper Shawn Porter of the Commercial Motor Vehicle Unit testified that truck drivers usually "don't [fuel their truck] on their off duty time," and that "when you're fueling you're responsible for the truck." (T. Tr. Jan. 25, 2018 at 233-234, 240.) He also testified:

> But when it's a long haul driver, when they're off duty they don't fuel their truck because they're responsible for that truck at that period of time, so they usually do everything before going off duty.

(T. Tr. Jan. 25, 2018 at 238.) Based on this testimony the fact finder could have inferred that Mr. Weddle's fueling of his truck on a day he indicated in his logbook he was off duty was illegal. Therefore, when viewing the evidence in the light most favorable to the State, there was evidence sufficient to prove beyond a reasonable doubt that Mr. Weddle falsified his record of duty status by indicating he was off duty on a day when he in fact fueled his truck. The court correctly denied Mr. Weddle's motion for judgment of acquittal on count 13.

Conclusion

For the above stated reasons the Appellee, the State of Maine, asks this Court to affirm the suppression court and trial court's rulings and affirm Mr. Weddle's conviction.

Dated: November 1, 2018

_____
Jeffrey Baroody, Dep. Dist. Atty.
Bar Registration No. 4678
Prosecutorial District VI
62 Union Street
Rockland, Maine 04841
(207) 594-0424

Certificate of Service

I hereby certify that I have this date forwarded two copies of the foregoing Brief of the Appellee to Jeremy Pratt, Attorney for Defendant, by mailing it via U.S. Post to P.O. Box 335, Camden, Maine 04843.

Dated: November 1, 2018

_____
Jeffrey Baroody, Dep. Dist. Atty.